IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 19212 of 2007(K)

PETITIONER:

WILSON GEORGE,
S/O N.V.VARKEY, NIRAPPIL HOUSE,
OLAMATTOM, THODUPUZHA.

BY ADV. SRI.RAJAN JOSEPH
SRI.KOSHY GEORGE
SRI.P.I.DAVIS

RESPONDENTS:

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1. DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM.

2. TAHSILDAR,
NORTH PARAVUR.

BY GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO. 19212 OF 2007

DATED THIS THE 2nd DAY OF JULY, 2007

JUDGMENT

The petitioner has been directed by Ext.P1 notice to demolish the petitioner's compound wall on the allegations that the same has been constructed encroaching into Government land. The petitioner's contention is that the petitioner has not encroached into any Government land and that the compound wall has been constructed in the petitioner's own property. The petitioner further submits that before issuing Ext.P1 notice, he has not been given any notice to show cause or hearing and therefore, Ext.P1 is violative of principles of natural justice as well as the provisions of the Land Conservancy Act and Rules.

2. I have heard the learned Government pleader also. The learned Government pleader could not satisfy me that Ext.P1 was preceded by any notice or hearing. Ext.P1 is also devoid of any reasons for invoking the emergency provisions under the Land Conservancy Act, which has to be recorded as per the provisions of the Kerala Land Conservancy Act. In the above circumstances, I am satisfied that Ext.P1 has been issued in violation of the principles of natural justice as well as the provisions of the Kerala Land

Conservancy Act and Rules. However, if Ext.P1 is treated as a show cause notice, it would not be necessary to quash the same. Accordingly, I direct the 2nd respondent to treat Ext.P1 as a show cause notice and Ext.P2 as the objections filed by the petitioner against the same. The 2nd respondent shall consider Ext.P2 objections to Ext.P1 in the light of the evidence to be produced by the petitioner for which the petitioner shall be given an opportunity to adduce evidence as also a hearing. Thereafter the 2nd respondent shall pass a speaking order considering the contentions of the petitioner on the basis of the evidence to be produced by the petitioner. Till orders passed as above are communicated to the petitioner, the petitioner shall not be evicted from the property in question and the petitioner's wall shall not be demolished.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd